Supreme Court, U.S.
FILED
DEC 29 2003
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No. 03-349

In The Supreme Court of the United States

JACK THWEATT,
on behalf of himself and all others similarly situated,

Petitioner,

v.

ELECTRONIC DATA SYSTEMS CORPORATION,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR REHEARING

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PETITION FOR REHEARING

The petitioner moves the Court to hold this petition for rehearing until the Court decides whether to grant certiorari in *Smith v. City of Jackson* and, if certiorari is granted in *Smith*, to grant rehearing and dispose of this case in accordance with the Court's decision in *Smith*.

THE PLAINTIFFS IN *SMITH V. CITY OF JACKSON* WILL SOON BE PETITIONING THIS COURT FOR A WRIT OF CERTIORARI.

On November 13, 2003, the Fifth Circuit issued its decision in *Smith v. City of Jackson*, __ F.3d __, 2003 WL 22671061 (CA5 Nov. 13, 2003), a case addressing the same issue presented in this case: whether disparate impact claims should be permitted under the ADEA. With the *Smith* decision, there is now a 5-3 split in the circuits on that important federal question. Counsel of record in this case has learned that the plaintiffs in *Smith* will soon be filing a petition for a writ of certiorari. Although the Court has issued an order denying review of the Eleventh Circuit's unpublished decision in this case, the Court may decide to accept review in *Smith* because the published decision in that case arises in a far more factually developed context and provides a substantial analysis of the disparate impact question presented in both cases.

CONCLUSION

For the reasons set forth above, as well as those contained in the petition for a writ of certiorari, the petitioner prays that the Court will hold this petition for rehearing until the Court disposes of the *Smith* petition, and then grant rehearing and dispose of this case in accordance with the decision in *Smith* if certiorari is granted in that case.

Respectfully submitted,

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December 29, 2003

CERTIFICATE OF COUNSEL

As counsel for the petitioner, I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2.

_____